

Coast Guard, DHS

§ 5.707

TABLE 5.569—SUGGESTED RANGE OF AN APPROPRIATE ORDER—Continued

Type of offense	Range of order (in months)
Failure to join vessel (required crew member).	2–6.
Violent acts against other persons (without injury).	2–6.
Failure to perform duties related to vessel safety.	3–6.
Theft	3–6.
Violent acts against other persons (injury).	4-Revocation.
Use, possession, or sale of dangerous drugs.	Revocation (Note: see § 5.59).
Negligence:	
Negligently performing duties related to vessel navigation.	2–6.
Negligently performing non-navigational duties related to vessel safety.	1–3.
Neglect of vessel navigation duties.	3–6.
Neglect of non-navigational safety related duties.	2–4.
Incompetence	The only proper order for a charge of incompetence found proved is revocation.
Violation of Regulation:	
Refusal to take chemical drug test.	12–24
Refusal to take required alcohol test.	12–24
Dangerous drugs (46 U.S.C. 7704).	The only proper order for a charge under 46 U.S.C. 7704 found proved is revocation.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by CGD 86-067, 53 FR 47079, Nov. 21, 1989; USCG-2000-7759, 66 FR 42967, Aug. 16, 2001]

Subpart I [Reserved]

Subpart J—Appeals

§ 5.701 Appeals in general.

A party may appeal the decision of an ALJ under the procedures in subpart J of 33 CFR part 20. A party may appeal only the following issues:

(a) Whether each finding of fact rests on substantial evidence.

(b) Whether each conclusion of law accords with applicable law, precedent, and public policy.

(c) Whether the ALJ committed any abuses of discretion.

(d) The ALJ's denial of a motion for his or her disqualification.

[USCG-1998-3472, 64 FR 28075, May 24, 1999]

§ 5.707 Stay of effect of decision and order of Administrative Law Judge on appeal to the Commandant; temporary credential or endorsement.

(a) A person who has appealed from a decision suspending outright or revoking a credential or endorsement, except for revocation resulting from an offense enumerated in § 5.59, may file a written request for a temporary credential or endorsement. This request must be submitted to the Administrative Law Judge who presided over the case, or to any Officer in Charge, Marine Inspection for forwarding to the Administrative Law Judge.

(b) Action on the request is taken by the ALJ unless the hearing transcript has been forwarded to the Commandant, in which case, the Commandant will make the final action.

(c) A determination as to the request will take into consideration whether the service of the individual is compatible with the requirements for safety at sea and consistent with applicable laws. If one of the offenses enumerated in § 5.61(a) has been found proved, the continued service of the appellant will be presumed not compatible with safety at sea, subject to rebuttal by the appellant. A temporary credential or endorsement may be denied for that reason alone.

(d) All temporary credentials or endorsements will provide that they expire not more than six months after issuance or upon service of the Commandant's decision on appeal, whichever occurs first. If a temporary credential or endorsement expires before the Commandant's decision is rendered, it may be renewed, if authorized by the Commandant.

(e) If the request for a temporary credential or endorsement is denied by the Administrative Law Judge, the individual may appeal the denial, in writing, to the Commandant within 30 days after notification of such denial. Any decision by the Commandant to deny is the final agency action.

(f) Copies of the temporary credential issued become a part of the record on appeal.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-2004-18884, 69 FR 58342, Sept. 30, 2004; USCG-2006-24371, 74 FR 11215, Mar. 16, 2009]